SOLDIER SUICIDES AND OUTCRIT JURISPRUDENCE: AN ANTI-SUBORDINATION ANALYSIS

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There was no miracle cure, no drug they could take to hold back or dissipate their feelings of horror, grief, or fear. “There is no preparation in our training for the mental health struggles that come later . . . .”

I. INTRODUCTION

Even if they survive the war, the soldiers who make it home are struggling to stay alive. Soldier suicides, which have reached staggering numbers since the onset of the wars in Iraq and Afghanistan, reflect the pervasive mental health issues that plague veterans. Post-Traumatic Stress Disorder (“PTSD”) rates have increased dramatically. Of the 30,000-plus suicides in the United States each year, 20% are acts by veterans. That translates to roughly eighteen veteran suicides each day. Among American soldiers returning from Iraq and Afghanistan who sought treatment at the Department of Veterans Affairs (“VA”) hospitals, more than 40% suffer from a mental disorder.

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The suicide rate of active-duty soldiers continues to escalate. In 2009, the Pentagon recorded 301 active-duty suicides among the four branches of the military—the highest figure since tracking began in 1980. Last year, the military set a record for suicides.

But even these numbers do not tell the whole story. The scariest statistics require us to unpack the regulatory scheme established by the VA for health care. To access the mental health care benefits—which is essential for veterans fighting PTSD—afflicted veterans must successfully navigate a maze of forms, filings, deadlines, and biases. Recent litigation brought by veteran advocates highlights the failures of the current VA mental health benefits policy. More significantly, the regulatory regime also reflects the ways in which a veteran with PTSD collides with our normative expectations for the “G.I. Joe Soldier,” a persistent myth that fuels the dissonance between mental health needs and services for veterans. Soldiers fighting mental illness are outside our normative expectations since we are culturally programmed to envision soldier-warriors who are seemingly indestructible in body and mind. Soldiers suffering from PTSD do not comport with the stereotypes promoted through propaganda.

As the American troops in Iraq and Afghanistan prepare to come home, the federal government will be challenged to meet the mental health needs of even more new veterans struggling with mental illness. So far, efforts to address the rate of soldier suicide and PTSD have been unsuccessful. Despite some legislative efforts and policy changes, the number of suicides continues to rise. A key component of the anti-suicide effort absent from the reform efforts has been a deconstruction of the suicide epidemic among American soldiers and

6. Id.
9. Throughout the Article, the terms “soldiers” and “veterans” are sometimes used interchangeably and will also encompass men and women in all branches of the military (the Army, Marines, Air Force, Navy, and Reserves). This combination will be limited to general discussions. When statistics are offered, a breakdown will be provided.
veterans. OutCrit jurisprudence, which employs transformative techniques to address the marginalization of vulnerable groups, offers a means of responding to soldier suicide.

OutCrit scholars envision a post-subordination world where traditionally subordinated groups are free of social disdain and able to access justice in a meaningful way. In this OutCrit vision, transformations in socio-legal conditions are needed to produce substantive security for communities traditionally relegated to outsider status. This Article suggests that OutCrit jurisprudence can be used to help identify the source of the mistreatment of veterans fighting for mental health treatment. It may also be instrumental to improving mental health treatment for soldiers. Part Two of this Article will discuss the problem of suicidality and PTSD among American soldiers and veterans. In Part Three, this Article will offer a brief outline of OutCrit jurisprudence. Part Four of this Article will apply three hallmarks of OutCrit jurisprudence—narrative, culture wars, and substantive equality—to the issue of soldier suicides. Specifically, this Article will employ OutCrit jurisprudence to critique the various ways narrative is controlled and culture wars play out in social and legal arenas to deny substantive equality to soldiers struggling with mental illness. Finally, in Part Five this Article concludes that OutCrit markers can help us understand and respond to soldier suicide.

II. THE PROBLEM: POST-TRAUMATIC STRESS DISORDER AND SUICIDE

Twenty-two-year-old Army veteran Joshua Omvig ("Josh") has become an unfortunate poster child for the face of the wars' newest casualties. This native of Gillette, Wyoming served eleven months in Iraq before his return home. Josh was back, but he would never be the same. He suffered from nightmares, dealt with flashbacks, and
told his family he thought he was depressed. But the stigma of seeking treatment for mental health—even after completing a tour of duty—was too great. Less than a month after his return, Josh took his own life. The story of Josh Omvig is one example of many that fit the description of the soldier struggling silently with mental illness.

Suicides among veterans have reached an epidemic level. Operation Iraqi Freedom (“OIF”) and Operation Enduring Freedom (“OEF”) are notable for the huge engagement numbers of Armed Forces. Rivaled in figures only by the Vietnam War, more than one and a half million people have been deployed in Iraq and Afghanistan. In 2010, President Barack Obama ordered 30,000 more troops to Afghanistan. Furthermore, advances in military defense technology have enabled more wounded soldiers to survive these operations. More soldiers survive, but as one writer noted:

Many of these survivors wake up each day only to be reminded of their traumatic injuries or debilitating mental disorders. A great majority of soldiers in combat experience traumatic events often considered horrific in a civilized society, such as seeing dead bodies or remains, or witnessing both friends and enemies killed in violent manners. The horrific violence is taking its toll on the soldiers. Army suicides are up to their highest level in twenty-six years. A study commissioned by the Pentagon in 2007 found that “hundreds of thousands” of the United States troops who completed a tour in Iraq or Afghanistan showed signs of Post-Traumatic Stress Disorder (“PTSD”), depression, or anxiety. According to recent United States Army data, Army troops seek mental health treatment in excess of 100,000 times a month—a jump of more than 75% between the final months in 2006 to the final months of 2009.

18. Id.
19. Id. Josh's parents encouraged him to seek professional help; however, Josh never did because he was afraid it would damage his career. Id.
22. Veterans' Mental Health and Other Care Improvements Act of 2008 § 301(1).
24. Pauline Jelinek, Army Suicides Highest in 26 Years, WASH. POST, Aug. 16, 2007. Active-duty suicides are at their highest level since the Vietnam War (115 soldiers on active duty took their own lives in 2007).
A. THE SYMPTOMS

Though the acronym has secured its place in contemporary culture, most people are not able to articulate the serious, complex symptoms associated with Post-Traumatic Stress Disorder ("PTSD"). Typically, PTSD follows exposure to "an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury."27 Symptoms of PTSD may include recurrent nightmares, difficulty falling asleep, hyper-vigilance, and outbursts of anger.28 Those with PTSD also show a high correlation with panic disorders, obsessive-compulsive disorders, social phobias, and major depressive disorders.29 Furthermore, the disorder is likely to be more severe when the stressor is of human design (as opposed to a natural disaster).30 Combat is one of the most severe stressors.31 "Seeing or handling human remains also dramatically increases the severity of any PTSD the service member may experience."32

B. THE NUMBERS

Post-Traumatic Stress Disorder ("PTSD") rates are as high as 18% among Operation Iraqi Freedom ("OIF") and Operation Enduring Freedom ("OEF") veterans,33 compared to 8% among veterans of the first Gulf War.34 More than one and a half million United States soldiers have been in Afghanistan and Iraq since 2001.35 As noted, there have been more than 4,000 casualties in Iraq, more than 30,000 injured, and more than 300,000 diagnosed with PTSD.36 According to the Department of Veterans Affairs ("VA"), more than 400,000 veterans receiving compensation benefits are "service connected for

28. Id.
29. Id.
30. Id.
31. Id.
36. Id.
PTSD.” As many as 30% of deployed soldiers are struggling with PTSD. In the general population—in contrast—PTSD impacts less than 4% of adults in the United States.

The comparable statistics for suicides are equally alarming. Army statistics demonstrate that the suicide rate among United States Army soldiers continued to rise steadily through 2009. In 2008 and 2009, soldier suicides set a “record pace.” But despite increasing awareness about suicidality among soldiers, soldier suicides continued to climb. In 2009, 160 cases were considered active-duty suicides. The figure represents the highest tally of active-duty soldier suicides since the Army starting tracking such deaths in 1980. The rate has significantly increased among men between the ages of eighteen and thirty, mid-career officers, and women. In 2009, the Marine Corps recorded fifty-two suicides—the highest number on record since 2001. The veteran suicide rate jumped 26% between 2005 and 2007, according to early reports from the VA. Compared to the suicide rate for civilian women, a military report showed that nearly

41. Id.
43. Id. In California, which has more returning veterans that any other state—approximately 30,000 a year—the suicide rates among 18 to 24 year-old veterans are four times higher than the same rates for non-veterans of the same age. Op-Ed., America Owes its Veterans a Proper Welcome, THE MODESTO BEE, Feb. 9, 2010, at A [hereinafter America Owes].
44. Christenson, supra note 42. Army Reserve soldiers not on active duty had seventy-eight reported suicides for the year. Id. In 2009, fifty-two marines and forty-eight sailors committed suicide. Id.
47. America at War, MEMPHIS COMMERCIAL APPEAL, Jan. 12, 2010.
twice as many women serving in Iraq and Afghanistan killed themselves.\textsuperscript{48}

Other violent activities among soldiers have also increased recently. Homicide rates among war veterans have risen.\textsuperscript{49} But it is the shocking rate of suicides among both soldiers and veterans that highlights the deadly failures of the mental health care system for the military. Consider one often-cited statistic: on average, eighteen veterans commit suicide daily.\textsuperscript{50} A 2008 study found that almost 20\% of Iraq and Afghanistan veterans show symptoms of PTSD or major depression.\textsuperscript{51} Other statistics regarding the suicide rate among active soldiers range from the Army's reported average of 11.6 per 100,000 soldiers per year to reports of 22 per 100,000 soldiers per year.\textsuperscript{52} By all accounts—including reports from the United States Army—male veterans are "twice as likely as civilians to commit suicide regardless of VA contact or treatment."\textsuperscript{53} Veterans are more likely than the civilian population to be affected by mental illness.\textsuperscript{54} Almost one-third of veterans returning from Iraq and Afghanistan report mental health issues—primarily they struggle with PTSD.\textsuperscript{55}

C. THE TRIGGERS

Several factors contribute to the increased incidence of depression and Post-Traumatic Stress Disorder ("PTSD") among soldiers in Iraq and Afghanistan. The correlation between mental illness and combat tours is nothing new. Mental health professionals—though not the military—have long recognized the correlation between combat and depression. Research conducted after other military conflicts has con-
sistantly shown that exposure to combat contributes to higher rates of depression, substance abuse, and PTSD.56

The usual triggers are aggravated for troops who have served in Iraq and Afghanistan. The following are among the most common aggravators for depression among troops: multiple deployments;57 ambivalence surrounding the legitimacy of war;58 waging war against combatants in civilian clothing;59 body-blocking armor;60 and the stigma of seeking treatment for mental health problems.61

Mental health experts have found that multiple deployments aggravate the circumstances surrounding PTSD and combat.62 The incidence of PTSD has grown as more and more United States troops have been exposed to combat. (Force levels in Iraq and Afghanistan exceeded 1.5 million.63) Another contributor to PTSD incidence was the extension of war zone rotations.64 Rotations grew in length.65 In addition, more troops served repeated tours.66 "Many of those killing themselves have been stationed at large posts that have repeatedly deployed soldiers to Afghanistan and Iraq since 2001, with many [Government Issue soldiers ("G.I.s")] completing several war-zone tours."67

In a military report compiled as part of the military's suicide prevention program, there was a "significant relationship between suicide attempts and number of days deployed" in Iraq, Afghanistan, or

57. Army reports found a significant correlation between suicide attempts and number of days deployed.
60. See infra notes 84-87 and accompanying text.
64. Id.
65. Id.
66. Id. Compared to soldiers who have served in other wars, soldiers in Iraq and Afghanistan serve much more frequent tours. LINDA ROBINSON, TELL ME HOW THIS ENDS: GENERAL DAVID PETRAEUS AND THE SEARCH FOR A WAY OUT OF IRAQ 205 (2008).
nearby countries where troops are participating in the war effort. According to the report, limited evidence also supported the correlation between suicidality and multiple deployments. Soldiers in Afghanistan and Iraq are serving multiple tours of duty, some of which last as long as twenty-four months.

A 2008 study by the United States Army Surgeon General confirmed the correlation between multiple deployments and mental health issues. The study found an 11.9% incidence of mental health problems among soldiers with one deployment, 18.5% among those with two deployments, and 27.2% among those with three or four deployments. Furthermore, the domino effect between deployments and suicide is incredibly simple to map: "Repeat deployments drive up cases of posttraumatic stress, which makes soldiers six times more likely to kill themselves."

Some experts believe that the high incidence of PTSD risk among young soldiers—those between eighteen and twenty-four years of age—may correlate to the higher combat exposure among the same group. The authors of a study conducted by researchers at the University of California, San Francisco and the San Francisco Veteran's Affairs ("VA") Medical Center found that young soldiers "are more likely to be of lower rank and more likely to have greater combat exposure than their older active-duty counterparts."

But some older counterparts are also at special risk. "Weekend warriors" are also a high-risk group. Among veterans with the National Guard or the Reserves, the development of PTSD is more prevalent among those older than forty years of age. Researchers speculate that older reservists move between established civilian lives to war and have a harder time trying to process combat trauma.

69. Id.
71. Haynie, supra note 62.
72. Id.
75. Id. The study examined data from 103,788 veterans. Id.
76. A "weekend warrior" refers to a reservist, a person who is a member of the military reserves.
78. Id. "It's the disparity between their lives at home, which they are settled in, and suddenly, without much training, being dropped into this situation," said one of the researchers. Id.
Researchers analyzing data on soldier suicides also suggest that waning public support increases the risk of mental health problems among veterans returning from Iraq and Afghanistan.\textsuperscript{79} Low public support hurts morale among troops—much like during the Vietnam era—and contributes to mental health problems for returning veterans.\textsuperscript{80} According to a recent CNN/Opinion Research Corporation Poll, 60\% of surveyed Americans opposed the United States war in Iraq in January 2010.\textsuperscript{81} At times, the figure has been as high as 68\%. The confusing nature of the wars in Iraq and Afghanistan—with blurry front lines and combatants—also contributes to the problem.\textsuperscript{83}

Ironically, advances in body-blocking armor may also contribute to the rise in PTSD. Advances in body-blocking armor may spare the lives of soldiers, but it also means that soldiers are surviving attacks that would have killed them in the past. The mental price for such physical survival translates to excessive psychological duress. Soldiers are witnessing massive destruction and death and are often un-equipped to process their experiences.\textsuperscript{84}

Body-blocking armor also contributes in another way to PTSD. Surviving soldiers are walking away with more brain injuries because the armor that has protected their bodies has exposed their skulls and brains to serious injury.\textsuperscript{85} Army Lieutenant General Eric Schoomaker, the Surgeon General managing the nation’s soldiers, said the link between traumatic brain injury (often caused by roadside bombs) and PTSD has surprised the Army.\textsuperscript{86} When the brain is bruised, the body releases an extensive stress hormone causing PTSD, which may lead to suicide.\textsuperscript{87}

With so many diverse contributing factors, it is hardly a surprise that suicide rates have continued to climb. In June 2010, the Army had thirty-two suspected suicides—one of the highest in history for a single month.\textsuperscript{88} Though the situation appears dire now, it may even be worse. Experts believe the suicide rates are even greater than cur-

\textsuperscript{80} \textit{Id.}
\textsuperscript{81} \textit{Polling Report, supra note 58.}
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} Dao, supra note 77.
\textsuperscript{84} See Haynie, \textit{supra note 62}. For example, one soldier reported that during a second tour in Iraq, he witnessed his closest friends fatally shot by a sniper, the death of four soldiers burned in a Humvee, and “scores of dead Iraqi civilians.” \textit{Id.}
\textsuperscript{85} Thompson, \textit{supra note 73.}
\textsuperscript{86} \textit{Id.}
\textsuperscript{87} \textit{Id.}
\textsuperscript{88} \textit{Id.}
rent statistics reveal. Some analysts have predicted that suicides and psychiatric mortality of the war could trump the combat deaths.

III. AN OUTCRIT JURISPRUDENCE PRIMER

OutCrit jurisprudence may help explain the prevalence of soldier suicides, account for the abysmal governmental response to the problem, and possibly develop some answers to reduce the number of soldiers who commit suicides. Despite the wide-sweeping legal reform in various arenas, OutCrit jurisprudence concerns itself with the continued hierarchies in American society. Specifically, the OutCrit scholars of the 1980s congregated at “postliberal 'networks'” to explore the on-going economic and social stratification of American society in spite of “decades of legal reformation.” In the legal academy, Outs, emerged to advance the social justice claims of people who have been historically marginalized.

The term “OutCrit” denotes the social position (outsider) and the analytical stance (critical) of diverse formations vis-à-vis law and culture. OutCrit jurisprudence reacts to and critiques the exclusion and marginalization of outsiders from society’s social, cultural, and economic mainstreams.

The OutCrit label has been used to describe groups united by a critical stance and positionality that explore theories including, but not limited to, critical race theory, queer legal theory, critical race feminism, and LatCrit theory. Both OutCrit scholars and activists

90. Id.
92. Francisco Valdes, Culture, Kulturkampf, and Beyond: The Antidiscrimination Principle under the Jurisprudence of Backlash, in BLACKWELL COMPANION TO LAW AND SOCIETY 276 (Austin Sarat ed., 2004). The rise of OutCrit jurisprudence occurred at the same time scholars and students from traditionally excluded groups gained entry into the academy. Id. at 279.
93. Valdes, supra note 91, at 1265.
94. Valdes, supra note 92, at 278.
95. Id.
96. Margaret Montoya & Francisco Valdes, “Latinas/os” and Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production,” 4 FIU L. REV. 187, 193 n.12 (2008). The term “outsider” has also been used to describe someone unable to access traditional channels of power in society. See, e.g., Kimberly Harrison et al., John B. Anderson: The Exemplary Dark Horse, 34 NOVA. L. REV. 347, 349 (2010) (describing Independent 1980 Presidential candidate John B. Anderson as a quintessential “insider” who champions “outsider” causes for minorities). Furthermore, Professor Valdes explains that his use of the “OutCrit” label not only re-
have focused their work on outgroups. These marginalized groups have historically included women, people of color, sexual minorities, and others who find themselves outside society’s values and the law’s protection. “These overlapping and intersecting genres share a common lineage in critical legal studies and realism.” The laws may be on the books to guard against discrimination, but for outsiders, meaningful policy reform and social change is still beyond their reach. Moreover, OutCrit jurisprudence moves beyond anti-discrimination into the realm of anti-subordination. OutCrit scholars pursue anti-subordination in an effort to achieve “actual social transformation, which by definition entails in-groups’ relinquishment of domination’s now-familiar comforts.”

OutCrits are able to recognize the limits of liberalism and advance socially relevant reform to transform policy. OutCrits work under the assumption that, despite the accomplishments of liberalism, social equity has still proven elusive. Strains of outsider scholarship attempt to represent marginalized viewpoints, “espouse critical, egalitarian, progressive and diverse anti-subordination agendas,” and raise both social consciousness and responsibility.

On its face, the phenomenon of pervasive socio-economic subordination despite legal reform applies directly to the problem of suicidal soldiers. Specifically, there have been several legislative reforms implemented nationally to improve veterans’ benefits—yet effective mental health treatment for veterans remains beyond the reach of these changes.

IV. OUTCRIT ANALYSIS

With the focus, then, on anti-subordination and social equity, how can OutCrit jurisprudence advance the discussion of mental health...
treatment for soldiers? Most importantly, how can OutCrit jurisprudence inform our approach to understanding and preventing soldier suicides? By using the hallmarks of OutCrit jurisprudence—narrative, culture wars, and an emphasis on anti-subordination—we can respond to soldier suicides.

A. Narrative

To readily capture the dominant societal perception of the modern soldier, one does not have to look much further than the local television or movie screen. Despite the ever-controversial stance on the war in Iraq and Afghanistan, the popular media image is unwavering in its commitment to the cause. More significantly, it presents an inflexible version of the “Citizen-Soldier.” In sharp contrast, documentary footage of the same war zones shows a different side to the soldiers there.

1. The Fiction: The Warrior

In less than three minutes, a popular army recruitment video showcases all of the glorification props of the Citizen Soldier—the American Ideal Warrior who is courageous, brave, determined, prone to drive race cars, likely to listen to rock music, and able to draw clear lines between justified combat and protective attitudes toward peaceful civilians. “National Guard Warrior”—a slick video produced by the National Guard—has been carefully crafted to employ the essential tools promoting the image of a G.I. Joe Soldier. In one scene, a white male soldier kisses his wife and child goodbye, and heads off in a red pick-up truck. In another scene, racecar driver Dale Earnhardt Jr. zooms around a racetrack. In another scene in the video, army tanks drive through the dessert as soldiers with guns secure both buildings and people. Helicopters fly overhead and res-
cues are made. Yet another scene depicts armed soldiers halting in their steps as a Middle Eastern child runs in front the truck in search of an errant soccer ball—the American soldiers stop, collect the child’s toy, and smile tenderly as they return it to him. In the final scene, veterans are honored in a parade on Main Street amid smiling children and colorful balloons. Throughout the video, musician Kid Rock plays his guitar and belts out a song:

Freedom ain’t so free when you breathe red white and blue
I’m giving all of myself, how about you?
And they call me warrior
They call me loyalty.
And they call me ready
To provide relief and help
I’m wherever you need me to be
I’m an American warrior.

To be fair, all advertisements are promotional by their very nature; promotional material rarely presents information in an unbiased, neutral manner. Furthermore, even the most ardent war opponent would be hard-pressed and misguided to attack the determination of the men and women serving the country. However, the message relayed by the video advertisement is clear: successful soldiers are strong in body and mind.

2. The Facts: Severe and Unclear

An antithetical image emerges in a documentary clip of the same activity. In the documentary film Severe Clear, nothing is clear and easily defined. The documentary film traces the story of a soldier in Afghanistan. The screen is fuzzy and grainy as a cameraman—who is really a soldier with a hand-held camera—tracks the events as they unfold. The images, naturally, are disturbing. The American soldiers are ambivalent at best. The “enemy” shooters in civilian clothing manifest the harsh realities of war. And though the viewers never see the soldiers make it home, the viewers already know that few surviving soldiers will be welcomed back with a hero’s parade.

Through media images such as an Army recruitment video and a documentary of the lives of soldiers in Afghanistan, the persistence of

114. Id.
115. Id.
116. Id.
117. Id. The lyrics to the song also evoke “The Soldier’s Creed” that pays homage to the work of those in uniform: “I will always place the mission first/I will never accept defeat/I will never quit/I will never leave a fallen comrade.” Eric Shinseki, For Vets with PTSD, End of an Unfair Process, USA TODAY, July 12, 2010.
118. SEVERE CLEAR (Sirk Productions 2009).
Decades later, the mythology surrounding G.I. Joe is entrenched in our culture. It is merely one expression of our normative expectations for soldiers, and a dangerous backdrop for validating erroneous systems that refuse to acknowledge the toll that war takes on soldiers' mental health. Even more troubling is the refusal to recognize the threat of suicidality as a priority. With Post-Traumatic Stress Disorder ("PTSD") at record rates among veterans, does anyone still believe that soldiers are indestructible? Why, then, has this particular narrative proven so difficult to dismantle?

OutCrit jurisprudence carefully examines the use of narrative in shaping both the law and society. First, OutCrits have embraced the stories of those who were often rendered invisible by mainstream theorists or marginalized by backlashers. Professor Francisco Valdes, LatCrit theorist, noted that the backlash jurisprudence historically and currently favors the white European male who is propertied, heterosexual and Christian. It favors European-identified cultures and images—customs, languages, religions, and phenotypes. It disfavors racial/ethnic minorities, non-Christian sects, women, indigenous people, sexual minorities, immigrants (especially non-European ones), the disabled, and other traditionally disempowered groups. It combines, in sum, Europe's predominant strains of racism, nativism, androsexism, heterosexism, and cultural chauvinism, which in centuries of colonialism were exported globally, and more recently, are being reinforced through the social, economic, cultural, legal and political processes of corporate globalization.

When analyzed against the backdrop of OutCrit jurisprudence, the careful cultivation of the mythologized soldier image advanced in popular media, such as the National Guard video, is a necessary part of the narrative created to advance the warrior soldier. The protection of the warrior image is essential to the culture of war. Moreover, the counter-narrative of the soldier fighting PTSD and battling suicidality is especially threatening to the story created to depict the modern-day G.I. Joe Soldier remains. Made popular in the late 1960s, the G.I. Joe action figure emerged as a plastic celebration of the hyper-masculine warrior. Decades later, the mythology surrounding G.I. Joe is entrenched in our culture. It is merely one expression of our normative expectations for soldiers, and a dangerous backdrop for validating erroneous systems that refuse to acknowledge the toll that war takes on soldiers' mental health. Even more troubling is the refusal to recognize the threat of suicidality as a priority. With Post-Traumatic Stress Disorder ("PTSD") at record rates among veterans, does anyone still believe that soldiers are indestructible? Why, then, has this particular narrative proven so difficult to dismantle?

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soldier. This use and abuse of narrative\textsuperscript{121} is needed to fuel the war efforts and relieve the government of its obligations to its troops.

Conversely, the careful use of narrative can be one tool deployed to transform our obligations to the troops. For example, OutCrits have used racialized narratives as a means of subverting “the dominant discourse” in various ways.\textsuperscript{122} As Professor Margaret E. Montoya has explained, narratives have advanced the anti-subordination project of Critical Race Theory through discursive subversions, identity formations, and healing/transformation.\textsuperscript{123} As applied to soldier suicide, the narrative of the soldier battling PTSD—a stark counter to the G.I. Joe Soldier—may serve all of these important goals.\textsuperscript{124} Through the use of story-telling and the elevation of the counter-narrative of outsiders, the problem is contextualized.\textsuperscript{125} Narrative is a key instrument in “discovering and dismantling the structures and strictures of power.”\textsuperscript{126} Professor Richard Delgado and Jean Stefancic posed a question in \textit{Critical Race Theory, An Introduction} that makes clear the value of narrative: “Have you ever had the experience of hearing one story and being completely convinced, then hearing an exactly opposite story, equally well told, and being left unsure of your convictions?”\textsuperscript{127}

Until very recently, the narrative of soldiers and suicidality has been carefully crafted and controlled to minimize the psychological damages of war. The development of the narrative of the soldier fighting PTSD can open the window to an “ignored or alternative reality.”\textsuperscript{128} In the same ways that Critical Race theorists relied on the power of stories to build understanding,\textsuperscript{129} OutCrits can rely on the power of the soldiers’ stories to challenge views.

\begin{footnotes}
\footnote{121. See generally id.}
\footnote{122. Margaret E. Montoya, \textit{Celebrating Racialized Legal Narratives, in Crossroads, Directions, and A New Critical Race Theory} 243 (Francisco Valdes et al. eds., 2002).}
\footnote{123. \textit{Id.} at 243.}
\footnote{124. Even the discussion of soldier suicides furthers narratives’ power to heal by breaking the silence.}
\footnote{125. Montoya, \textit{supra} note 122, at 244.}
\footnote{126. \textit{Id.} at 248-49.}
\footnote{127. \textit{RICHARD DELGADO \& JEAN STEFANCIC, CRITICAL RACE THEORY; AN INTRODUCTION} 37 (2001).}
\footnote{128. \textit{Id.}}
Moreover, some critical storytellers defend the destructive function of narratives. Myths and stereotypical perceptions have been linked to the formal law because they "supply the background against which the latter are interpreted and applied. Critical writers use counter-stories to challenge, displace, or mock these pernicious narratives and beliefs." To this end, the elevation of narrative in the soldier suicide arena can be used to first expose and then destroy the myth of the G.I. Joe Soldier.

B. CULTURE WARS

If the abuse and use of narrative describes the storytelling, culture wars govern the movement of the story. Cultural attitudes direct movement—on one end the repression of issues, and on the other, the permission to recognize trends. Historical "lifting" of activity once limited to outsiders has redefined and reinvigorated "moral crusades."

As a result, these culture wars have resulted in the rise of the backlash jurisprudence, which is aimed at mounting a response directly opposed to the legacies of liberalism. Even without a formal dismantling of "legal equality," backlashers seek to diminish social gains and cripple the antidiscrimination principle. Backlash jurisprudence has influenced virtually every reach of the law—the courtrooms, the legislature, the bench, the classroom, and popular culture. The effect has been the elevation of political ideology that celebrates an adherence to history and tradition in the name of a...
“principled” platform. As Professor Francisco Valdes pointed out, “the reinterpretive process of backlash jurisprudence has effectively inverted antidiscrimination law to license and legitimate ‘traditional’ patterns of discrimination and their stratifying social effects.” Backlash jurisprudence has been consistently hostile to the protection of civil rights. Professor Valdes noted that the culture wars are about culture’s “construction of power in law and society” and “re-shaping social life by law.” Professor Valdes asserted that in its most pernicious state, the law has been used to achieve the “supremacy of a particular normative conception.”

The regulatory scheme currently in place for veterans in need of mental health treatment does exactly this—it guarantees systemic delays and procedural defects that deprive soldiers of health care access, and it advances the normative conception of the mythological warrior soldier. The scheme also ensures the subordination of the soldier with mental illness.

Cultural embrace of the G.I. Joe image also fuels the multiple deployments of soldiers in Iraq and Afghanistan. Multiple deployments are now becoming the norm. Almost 40% of the troops deployed to Iraq and Afghanistan since 2003 have been deployed more than once, according to the American Journal of Public Health. Ten percent have been deployed three times or more. Even in the face of multiple deployments, the soldier struggling with Post-Traumatic Stress Disorder (“PTSD”) is not automatically exempt from service. Because the symptoms of PTSD range in severity, many service members with the disorder are “considered fit to serve.” Much like other culture wars, PTSD is persistent in its hostility to vulnerable groups. Overall, the entire Veterans Affairs (“VA”) regulatory scheme reflects an outmoded cultural refusal to acknowledge the mental and emotional strains of war.

136. Id.
137. Id. at 281.
138. Id.
139. Id. at 272.
140. Id. One example where the culture wars have played out pretty plainly in the United States has been in the arena of assaults against human rights protections for lesbian, gay, bisexual, transsexual, and queer (“LGBTQ”) people. In his criticism of the majority’s opinion concerning legal protection for individuals on the basis of sexual orientation, U.S. Supreme Court Justice Antonin Scalia referred to the culture wars being played out. Romer v. Evans, 517 U.S. 629, 636 (1996) (Scalia, J., dissenting) (“The Court has mistaken a Kulturkampf for a fit of spite.”).
142. Id.
143. Id.
144. Id.
United States Department of Defense officials have made this distinction even more entrenched through recent decisions to further oust the mentally disabled from the societal norms. In 2009, the Defense Department rejected the idea of making troops suffering from PTSD eligible for the Purple Heart.\(^{145}\) Despite recommendations from military psychologist John E. Fortunato at Fort Bliss, Texas that making troops suffering from PTSD eligible for the Purple Heart would go a long way to remove the stigma of the disorder, Defense Department officials have refused to recognize the disorder through a Purple Heart designation.\(^{146}\) The Defense Department gave two reasons for its decision to preclude PTSD from Purple Heart designation: precedent and proof problems.\(^{147}\) Defense Department officials said the Purple Heart has never been awarded for mental disorders or psychological conditions.\(^{148}\) The Defense Department also said that medical science was unable to provide an objective standard to determine who should receive an award based on PTSD.\(^{149}\)

Veteran advocates were divided regarding the appropriateness of award the Purple Heart for PTSD.\(^{150}\) For example, the Military Order of the Purple Heart, a veterans group, released a statement that the Purple Heart should only be awarded for troops who shed blood.\(^{151}\) Other groups and veterans maintained that the psychological harms were just as real as the physical injuries.\(^{152}\) One veteran who served in the Vietnam War with the Marines said in Stars and Stripes that his psychological wounds are just as real as the physical wound he got in Vietnam: “My wounds do not bleed but they have as many scars as a lot of other wounds. These wounds will never heal anymore than the scars, from any that are from combat-related fighting, will disappear.”\(^{153}\) Some veterans had held out hope that awarding the Purple Heart for PTSD would not only recognize the service and sacrifice of soldiers but would remove some of the stigma that comes with the diagnosis.\(^{154}\)

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146. Id. The United States military has awarded the Purple Heart medal to soldiers wounded or killed in battle by enemy action since 1932. MICHAEL J. SANDEL, JUSTICE: WHAT’S THE RIGHT THING TO DO? 10 (2009).
147. Id.
148. Id.
149. Id.
150. Id.
151. See Schogol, supra note 145.
152. It is worth noting here that in the Iraq War, “one of the most common injuries recognized with the Purple Heart has been a punctured ear-drum, caused by explosions at close range.” SANDEL, supra note 146, at 10.
153. Schogol, supra note 145.
154. Id.
As Professor Michael Sandel noted in his book *Justice*, the debate over the award of the Purple Heart for soldiers with PTSD is more than a medical or legal dispute: "At the heart of the disagreement are rival conceptions of moral character and military valor." Further, the government's stance on the debate makes clear that in its assessment, PTSD struggles earned in battle do not merit recognition generally associated with sacrifice and valor.

This position is more troubling because one critical factor that contributes to the remarkable increase in PTSD and suicides among soldiers is the on-going stigma and shame associated with mental health treatment. "Many soldiers are embarrassed to seek help and worried that doing so will hamper their prospects for advancement." Soldiers are also reluctant to identify themselves in a manner inconsistent with the "warrior" images associated with war heroes. They are pressed to identify with the hyper-masculine, resilient, and unflappable soldiers captured in popular culture. One soldier, having arrived first on the scene where several suspected insurgents were blown up on a Baghdad street, found children in the middle of a barrage and asked his sergeant for help. The soldier was told: "Get the sand out of your vagina."

The culturally celebrated image of the warrior soldier reinforces the idea that seeking mental health treatment is a sign of weakness. However, some veterans have been able to break free of these constraints. Retired Command Sergeant Major Samuel Rhodes, who served three tours in Iraq, is an anomaly among his peers. Rhodes has recounted in great detail his battles with depression. "It's not about me," Rhodes said, "Every one of us can tell our own story. Start telling it. Change the culture of the silence."

C. Substantive Equality

As one of its most basic premises, OutCrit jurisprudence recognizes that though the law may grant legal mechanisms for basic "equal" treatment, in practice there exists a gulf between outsiders and access to justice. Already, advocates for mental health treatment for veterans have employed several tactics to access justice. Advo-

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155. Sandel, supra note 146, at 11.  
158. Id.  
159. Abdullah, supra note 156.  
cates have attempted to apply traditional media pressure. They have petitioned Congress\textsuperscript{161} and they have sought justice through litigation.\textsuperscript{162} Nevertheless, effective treatment for mental health issues among our soldiers and veterans remains beyond reach for most.

The systemic refusal to acknowledge the mental health challenges of soldiers and veterans represents the legal and social marginalization of these men and women. Professor Valdes stated that entrenched identity politics celebrates the Euro-heteropatriarchal interests and subordinates all "different" realities.\textsuperscript{163} The other social group categories have been built on class, religion, sexual orientation, and race.\textsuperscript{164} Because suicidal soldiers challenge the normative expectation of the soldier—and expose the warrior soldier mythology—they are firmly relegated to outsider status and denied the full protection offered through socio-legal venues.

Further, the soldier battling mental illness confronts the problems typically associated with anyone having a mental or physical

\textsuperscript{161} Several bills have been floated in an attempt to create a better mechanism for addressing mental health issues among service-people. \textit{Id.} at 623. The Joshua Omvig Veterans Suicide Prevent Act of 2007 (the "Act"), for example, mandates that the VA implement a comprehensive program to help veterans cope with mental health problems. \textit{Id.} Though less specific than other legislation, the Act is more expansive and seeks to prevent suicide through outreach and education. \textit{Id.} See Joshua Omvig Veterans Suicide Prevention Act of 2007, Pub. L. No. 110-110, 121 Stat. 1031 (codified as amended in scattered sections of 38 U.S.C.).

\textsuperscript{162} The class-action lawsuit was filed by two groups, Veterans for Common Sense and Veterans United for Truth. See Veterans for Common Sense v. Peake, 563 F. Supp. 2d 1049 (N.D. Cal. 2008). In the lawsuit against the U.S. Department of Veterans Affairs, veterans advocates asserted that the federal government failed to meet the mental health needs of former troops. Jim Christie, \textit{U.S. Judge Dismisses Lawsuit Over War Veteran Care}, THOMSON REUTERS, June 25, 2008, http://in.reuters.com/article/idINN2527490520080625. The United States District Court for the Northern District of California found that there were no systemic violations to compel intervention and held that the remedies sought by the plaintiffs exceeded the court's jurisdiction. \textit{Peake}, 563 F. Supp. 2d at 1092. United States District Judge Samuel Conti, who presided over the case, did make the following observations about the benefits-adjudication process:

> After hearing testimony and argument during almost three weeks of trial and reviewing the parties' voluminous submissions, two things have become clear to the Court: \textit{the VA may not be meeting all of the needs of the nation's veterans}, and the remedies proposed by Plaintiffs are beyond the power of this Court. \textit{Id.} at 1056 (emphasis added). The decision is being appealed. Joshua Kors, \textit{How the VA Abandons Our Vets}, \textit{The Nation}, Sep. 15, 2008, http://www.joshuakors.com/va.pdf.


\textsuperscript{164} \textit{Id.} at 884. These social categories, in short, are artifacts of particular prevalent belief systems and their apparatuses of societal control. They are the contemporary indicia of neocolonial tradition and traditionalist ideologies imposed socially, economically, and legally by dominant groups to organize law and society around themselves, and to sustain their dominance in perpetuity, in the wake of colonial rampage and conquest. \textit{Id.}
impairment. Dismantling the social stigma attached to mental illness has been a difficult task for advocates to overcome.165

The persistence of the on-going stigma facing soldiers and veterans struggling with mental health issues is manifested in myriad forms. One such manifestation arose during the debate on the Senate floor in 2007 regarding the Joshua Omvig Veterans Suicide Prevention Act of 2007.166 Concerned about the negative impacts of the mandatory screening and tracking provisions in the bill, Senator Tom Coburn, a Republican from Oklahoma, placed a hold on the bill.167

At the time, “[t]he media characterized Coburn’s objections as a Second Amendment rights activist’s concern that the mandatory screening and tracking provisions of the bill would result in documented mental health histories, which would then hinder veterans’ future attempts to secure gun permits.”168 Coburn raised vigorous objections to such characterization and defended his concerns about the mandatory provisions by arguing that it was “insulting” to assume that veterans should be automatically screened for mental health issues.169 Coburn said he challenged tracking provisions because they could potentially interfere with the privacy of veterans’ medical records and threaten their future job prospects.170 The result obstructed one of the essential goals sought by the act: the de-stigmatization of mental health among soldiers.171

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170. Cvetanovich & Reynolds, supra note 160, at 629. He also challenged both the wisdom of a peer counseling plan included in the scheme and defended his concerns about the bill’s provisions were already included in the VA Strategic Mental Health Plan already in place. Id.; see also Senator from Oklahoma Places Hold on Omvig Suicide Prevention Bill, WCF COURIER, Sept. 7, 2007, http://wcfcourier.com/news/regional/article_5a79a4e3-ac30-5f02-9fbb-c3853b46c9bf.html. In a press release issued after he reached an agreement on the bill in 2007, Sen. Coburn said, “As a result of changes made in the bill, basic health care for veterans will not be preconditioned on a mental health screening.” Senators Coburn, Harkin Reach Agreement on Joshua Omvig Veterans Suicide Prevention Act, COBURN (Sept. 27, 2007), http://coburn.senate.gov/public/index.cfm/press-releases?ContentRecord_id=4884dee1-802.

171. Randall Omvig said at the Mental Health Issues Hearing that removing the stigma of mental health treatment was a primary goal of the act. Hearing on Mental
Advocates for veterans and mental health treatment have repeatedly stressed the value of "mandatory screenings" and "face-to-face" counseling for each and every returning service member. Proponents of such measures say red flags for suicidal intentions are more likely to surface during such evaluations. The privacy costs associated with mandatory screenings are easily outweighed by the benefits. Although some soldiers might be reluctant to participate in mental health screening, for instance, the goals of preserving human life and ensuring physical safety are more compelling. Furthermore, privacy can be protected through stringent confidentiality guarantees. Mental health experts studying suicidality among soldiers have repeatedly reported that active-duty soldiers and veterans are reluctant to seek help. Mandatory screenings will remove from soldiers the burden and stigma of asserting their right to treatment for their on-going psychological battles.

The Department of Veterans Affairs ("VA") provides health care for approximately eight million enrollees nationwide, but has never been able to adequately address mental health needs for veterans. The system is fragmented and fraught with delay. The application process required to begin benefits access is burdensome. By all accounts of the regulatory scheme in place, the suicide prevention program lacks ambition and implementation.

To even begin to access mental health benefits, claimants must complete a lengthy disability application. Like in all health benefits claims at the VA, the claims and appeals process is protracted. And by regulation, veterans are prohibited from paying an attorney to

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*Health Issues Before the Comm. on Veterans' Affairs, 110th Cong. 1 (2007) (statement of Randall Omvig, Comm. on Veterans' Affairs).
173. Id.
175. Congress passed the Joshua Omvig Suicide Prevention Act of 2007 to mandate that the VA create a comprehensive program to address mental health programs of all veterans. Id. at 635-36. However, the Act merely calls for outreach, peer counseling, and suicide awareness. Id.; see also Benjamin W. Wright, The Potential Repercussions of Denying Disabled Veterans the Freedom to Hire an Attorney, 19 FED. CIR. B.J. 433 (2009).
176. Kors, supra note 162. The application is filled with charts and legal jargon, requests for dates, and other information on the veteran's military and medical history. Id. For most of us, this is a nuisance, but for people with PTSD, immobilizing depression, it is often an insurmountable obstacle.
assist them as they pursue their initial claims.\textsuperscript{178} At the very least, such obstacles in the regulatory scheme should be removed. The new policy advanced by President Barack Obama in July 2010 eases some of the proof-problems veterans faced when making Post-Traumatic Stress Disorder ("PTSD") claims.\textsuperscript{179} However, the Administration must continue to make strides in both law and societal norms. Anti-subordination principles suggest formal rights are merely a single step toward substantive equality.

OutCrit jurisprudence would propel the search for substantive equality and lead to wide-sweeping policy changes. Specifically, it would provide a framework for cultural shifts that would allow acknowledging and embracing soldiers struggling with depression. It would also help accelerate the slow changes that are finally starting to emerge. Despite initial reluctance, the American government has slowly started to respond to the issue of soldier suicide. Essentially, the problem has become too big to ignore. A string of several high-profile suicides and murders among soldiers and veterans triggered the formation of a Mental Health Advisory Team ("MHAT") to specifically assess the mental health needs of troops serving Iraq and Afghanistan.\textsuperscript{180} MHAT wrote several reports between 2003 and 2006 that found that suicides and mental health issues were relatively high compared to averages before Operation Iraqi Freedom ("OIF") and Operation Enduring Freedom ("OEF").\textsuperscript{181}

The National Institute of Mental Health also commissioned a $50 million study to help identify risk factors and suicide prevention measures among soldiers.\textsuperscript{182} The study was prompted in large part as a direct response to the Army's request to mobilize responses to suicide among soldiers.\textsuperscript{183} The Department of Defense Appropriations Act of 2010\textsuperscript{184} also earmarked $492 million to increase medical and psycho-

\begin{itemize}
\item \textsuperscript{178} 38 U.S.C. § 5904(c)(1) (2010). The prohibition on hiring a lawyer traces its roots to the 1860s—the Lincoln Administration was worried that "lawyers would charge vulnerable Civil War veterans exorbitant fees for filing their disability papers." Kors, supra note 162. The current rationale is to level the playing field so that more affluent veterans are not able to get more assistance than their poorer counterparts who are unable to hire an attorney. The VA also maintains that the claims process is non-adversarial. See Matthew J. Dowd, No Claim Adjudication without Representation: A Criticisim of 38 U.S.C. § 5904(C), 16 Fed. Cir. B.J. 53 (2006).
\item \textsuperscript{179} See infra notes 186-89 and accompanying text.
\item \textsuperscript{180} Cvetanovich & Reynolds, supra note 160, at 620.
\item \textsuperscript{181} Id.
\item \textsuperscript{183} Id.
\end{itemize}
logical research and counseling programs.\textsuperscript{185} The newest regulations should open the door for more veterans to access mental health care.

In July 2010, the VA began to simplify significantly the process by which veterans with PTSD could access health care benefits.\textsuperscript{186} The new VA regulations reduce the documentation needed for veterans claiming a service connected with PTSD.\textsuperscript{187} The new regulations liberalize the evidentiary standard\textsuperscript{188} and relax the previous requirement of a corroboration of a PTSD stressor, a rule that was often an obstacle for veterans seeking treatment for PTSD.\textsuperscript{189}

The efforts are long overdue and still do not go far enough. Post-deployment mental health screening should be mandated to identify at-risk soldiers earlier, and formal steps should be taken to strip the stigma that still characterizes much of mental health access for soldiers in the United States.

The recognition of the mental health problems afflicting soldiers suffering from PTSD is one step toward the transformation of societal norms that cement the outsider status of soldiers struggling with depression and prevent their access to substantive equality. Designations directly affect the consequences that flow from them. For instance, sociologists have noted that the designation of a person as ill “changes the obligations which others have toward the person and his [or her] obligations toward them.”\textsuperscript{190}

Conversely, the refusal to recognize—either by law or societal norms—the mental illness that affects soldiers relieves society of its collective obligations.\textsuperscript{191} As OutCrit scholars have noted in other arenas, merely having the law on the books is not enough to overcome the

\textsuperscript{185} \textit{Win the Invisible War}, supra note 172. New programs such as “Real Warriors Campaign” also exhibit the military's newest move to encourage soldiers to seek help for depression. \textit{Military Opens Up About Its Growing Suicide Epidemic}, \textsc{McClatchy News Serv.}, Jan. 31, 2010. The catchphrase for the program is “Resilience. Recovery. Reintegration.” \textit{Id.}

\textsuperscript{186} \textit{Id.}

\textsuperscript{187} \textit{Id.}

\textsuperscript{188} \textit{New Regulations on PTSD Claims}, U.S. \textsc{DeP't of Veterans Affairs} (July 12, 2010), \textsc{http://www.va.gov/PTSD_QA.pdf}.

\textsuperscript{189} \textit{Id.}, supra note 186. Veterans advocates say the change will help more veterans get treatment for PTSD more quickly; critics, however, claim that changes will lead to more fraudulent claims (though advocates believe it is unlikely that veterans will abuse the new rules). \textit{Id.}

\textsuperscript{190} \textit{Joseph Gusfield, Moral Passage: The Symbolic Process in Public Designations of Deviance, in Law in Action: A Socio-Legal Reader} 528, 532 (Stewart Macaulay ed., 2007).

\textsuperscript{191} Indeed, several public leaders continue to advocate deliberate efforts to address the mental health needs of veterans. Rev. Jesse Jackson, for instance, recently called for lifetime counseling for veterans. \textit{See generally Rev. Jesse Jackson, Address at Na-
societal hostility to soldiers with PTSD or to guarantee their right to meaningful assistance. The stories must change; the culture must be transformed. Furthermore, adherence to hyper-masculinity—another iteration of the Euro-heteropatriarchy dominant in the United States—reinforces the “traditional” identity politics. Such politics leave no room for the emotionally wounded soldier and are not prepared to confront the complexities and disappointments of war.

V. CONCLUSION

OutCrits have developed transformative techniques to address the marginalization of vulnerable groups unable to access the full protection of the law. As applied to soldier suicidality, OutCrit markers provide a means to critique and address the issue of soldier suicide. The recognition of the problem of suicidality and Post-Traumatic Stress Disorder has been slow to emerge; instead, society has been stubbornly clinging to the mythology of the warrior soldier. The use of narrative to reframe the stories of soldiers is central to moving the social marker and accepting soldiers struggling with suicidal thoughts. Rather than accept the manufactured, hyper-masculine image of the soldier, we should tell honest stories about the struggles of depression and isolation. Challenging normative expectations for soldiers is the first step toward meaningful reform.

Furthermore, recognition of the culture wars that gave life to backlash jurisprudence may help us understand the elevation of the fiction that still contributes to policy failures in the treatment of soldiers and veterans. Simplifying the lethal maze of the Veterans Affairs regulatory scheme, rededicating efforts to remove the stigma of mental health treatment for veterans and soldiers, and holding the government accountable in the courtroom are a few ways to possibly achieve substantive equality. As the wars in Iraq and Afghanistan come to an end and the numbers of new veterans returning from those wars continues to swell, it will become even more important to understand and prevent the growing problems of soldier suicide. The

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192. See Valdes, supra note 163, at 883.

hallmarks of OutCrit jurisprudence—an examination of narrative, culture wars, and anti-subordination efforts—provide one path to improving our response to soldier suicide.